IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4075 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NILESHKUMAR NATVARSINH ATODARIYA

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for the Petitioner.

MR MR PRAJAPATI for Petitioner No. 1

Mr.Archana Raval, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 28.1.2004. By the impugned order, the petitioner is detained as a 'bootlegger' under the provisions of the Prevention of

Anti-social Activities Act, 1985 ("PASA", for short). Along with the grounds of detention, the detenu was also served with the grounds of detention.

In the grounds of detention, there is a reference about one pending criminal case against the petitioner. The said complaint is registered against the petitioner under the Bombay Prohibition Act. On the basis of the aforesaid sole registered criminal case as well as on the basis of statements of three witnesses, whose names have not been disclosed to the petitioner, he is detained as a `bootlegger' under PASA.

Mr.Prajapati, learned Advocate for the petitioner, submitted that there is only a solitary case under the Bombay Prohibition Act. According to him, it cannot be said that the petitioner can be said to be a habitual offender, as, only one case is registered against the petitioner. He further submitted that the authority has not given the names of witnesses, whose statements have been recorded, by claiming privilege under Section 9(2) of PASA.

Mr.Prajapati also submitted that, before exercising the powers under Section 9(2) of PASA, appropriate enquiry has not been made by the detaining authority to find out the credentials of the witnesses as well as of the detenu. It is submitted that on the aforesaid ground also, the order of detention is required to be quashed.

The petition is not controverted by the respondents by filing a reply and, therefore, the grounds mentioned in the petition are required to be accepted.

Apart from the aforesaid aspect of the matter, it is required to be noted that, in the detention order, the detaining authority has not stated as to on what basis it reached the subjective satisfaction for withholding the names of the witnesses under Section 9(2) of PASA. The detaining authority has merely stated that it is not in the public interest to disclose the names of the witnesses as the petitioner is dealing in illicit liquor and that he is a bootlegger and, therefore, if the names are disclosed, he may assault the witnesses and he may even damage their properties. Before exercising the powers under Section 9(2) of PASA, in my view, the authority was required to reach subjective satisfaction by at least examining those witnesses and thereafter, the authority was required to come to the conclusion whether the fear expressed by the witnesses is correct or not.

Privilege under Section 9(2) of PASA cannot be exercised in such a mechanical manner. Under the circumstances, it can be said that the subjective satisfaction for withholding the names of the witnesses is vitiated, as, appropriate material for withholding such names is not available on record. If these statements are taken out from consideration, then, there remains only one solitary case. On the basis of such solitary case, it cannot be said that the petitioner is a habitual offender.

To substantiate this point, the learned Advocate for the petitioner relied upon the decision of this Court in Sandip Omprakash Gupta v. State of Gujarat and others, 2004(1) GLR 864. In the said decision, a solitary offence under the Bombay Prohibition ACt was registered against the detenu and the authority relied on two other unregistered offences based on statements of certain witnesses and, therefore, a learned single Judge of this Court held, on facts, that the detenu could have been dealt with under the ordinary criminal law. The order of detention passed therein, treating the petitioner as a bootlegger is set aside. Since I am bound by the view taken by the learned single Judge, in view of the aforesaid ground about solitary incident of a registered case under the Bombay Prohibition Act, only on the basis of the aforesaid submission about solitary case lodged against the petitioner, which can be taken care of under the ordinary criminal law, this petition is required to be allowed.

Considering the aforesaid decision of this Court, the petition is required to be allowed and it is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

27th July, 2004 ( P.B. Majmudar, J. )

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(apj)